Polyparts Sdn Bhd v Niban Mould (M) Sdn Bhd

HIGH COURT (PULAU PINANG) — ORIGINATING MOTION NO 25–68 OF 2003
KAMALANATHAN RATNAM J
25 FEBRUARY 2004

Civil Procedure — Jurisdiction — Sessions Court — Application to transfer case from sessions court to High Court — Whether counterclaim exceeded sessions court's jurisdiction — Whether application to transfer allowed

The respondent (plaintiff) had filed an action against the applicant (defendant) in the sessions court for the amount of RM66,300 being the balance due sum for moulds manufactured by the respondent at the applicant's request. The applicant then filed a defence and had pleaded that the moulds supplied by the respondent were defective and not in accordance with specifications and also not fit for the purpose they were intended for. The applicant averred that since the moulds were defective the applicant's customers refused to take delivery of the defective moulds. Thus, the applicant filed a counterclaim for the amount of RM253,524. Since the counterclaim exceeded the jurisdiction of the sessions court, the applicant filed an application by way of an originating summons to transfer the case filed in the sessions court to the High Court.

Held, dismissing the application with costs:

(1) The respondent's solicitors had effected service of the summons at the sessions court and had informed the applicant by a letter of the first mention date (ie 12 May 2003) and if the applicant or its solicitors were absent, the respondent's solicitors would proceed to take in default judgment. Pushed by this threat, the applicant wrote two letters (dated 21 and 22 April 2003) to the respondent requesting for part drawing information relating to a mould PBT (2 CAV) (see para 5).

(2) It was clear that nowhere in any of the two letters written by the applicant to the respondent was the issue of defective moulds supplied by the respondent raised. It was only raised by the applicant in its defence. This application was nothing more that an attempt to delay and derail the trial in the sessions court (see paras 5, 7).

[**Bahasa Malaysia summary**

Responden (plaintif) telah memfailkan satu tindakan terhadap pemohon (defendan) di mahkamah sesyen bagi amaun sebanyak RM66,300 yang merupakan jumlah baki untuk acuan-acuan yang dikilangkan oleh responden di atas permintaan pemohon. Pemohon kemudian memfailkan satu pembelaan dan telah mengemukakan bahawa acuan-acuan yang dibekalkan oleh responden adalah rosak dan tidak menurut spesifikasi dan juga tidak sesuai dengan tujuan yang dirancangkan. Oleh kerana acuan-acuan tersebut rosak, pelanggan-pelanggan pemohon menolak serahan acuan-acuan tersebut. Dengan demikian, pemohon memfailkan satu tuntutan balas bagi amaun sebanyak RM253,524. Oleh kerana tuntutan balas tersebut telah melebihi

bidang kuasa mahkamah sesyen, pemohon telah memfailkan satu permohonan melalui saman pemula untuk memindah kes yang telah difailkan di mahkamah sesyen ke Mahkamah Tinggi.

Diputuskan, menolak permohonan tersebut dengan kos:

(1) Peguam responden telah mengemukakan penyampaian saman dimahkamah sesyen dan telah memberitahu pemohon melalui surat mengenai tarikh sebutan pertama (iaitu 12 Mei 2003) dan jika pemohon atau peguamnya tidak hadir, peguam responden akan mengambil penghakiman ingkar. Oleh kerana itu, pemohon tersebut telah menulis dua surat (bertarikh 21 and 22 April 2003) kepada responden untuk memohon sebahagian maklumat lukisan berkaitan dengan acuan PBT (2 CAV) (lihat perenggan 5).

(2) Adalah jelas bahawa tiada apa-apa dalam surat-surat yang ditulis oleh pemohon tersebut kepada responden membangkit isu acuan-acuan rosak yang dibekalkan kepada responden. Ia hanya dibangkitkan oleh pemohon dalam pembelaannya. Permohonon ini hanya bertujuan untuk melambatkan perbicaraan di mahkamah sesyen (lihat perenggan-perenggan 5, 7).]

Notes

For cases on jurisdiction of sessions court, see 2(3) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 3864–3868.
For transfer of case from sessions court to High Court see 1 *Halsbury's Laws of Malaysia* (2002 Reissue) para [10.1-063].

Chia Loong Thye (Lee Hishammuddin) for the applicant.
Ranjit Singh Dhillon (Ranjit Singh Dhillon & Co) for the respondent.

The application

[1] By way of an originating summons the applicant applied to transfer case No 52–559– 2003 which was filed in the Sessions Court at Georgetown to the High Court at Penang with costs in the cause and other consequential reliefs the court thought fair and proper to allow.

Facts

[2] The respondent herein filed an action in the sessions court against the applicant as defendant claiming a sum of RM66,300 being the balance due for moulds manufactured by the respondent at the applicant's request. In that action, the respondent had pleaded specific particulars of the invoices with dates and the amounts claimed. The respondent had also in the particulars stated the various amounts paid by the applicant periodically/ leaving a balance sum of RM66,300 which the applicant had failed to pay in spite of repeated demands.

[3] The applicant then filed a defence in which it admitted receiving the various invoices and also admitted having paid a sum of RM122,259.

However in the defence, the applicant pleaded that the moulds supplied by the respondent were defective and not in accordance with specifications and also not fit for the purpose they were intended for. The applicant averred that since the moulds supplied by the respondent were defective, the applicant's customers to whom it supplied the moulds, refused to take delivery of the defective moulds and so the applicant filed a counterclaim for RM253,524. Since the counterclaim exceeded the jurisdiction of the sessions court the applicant then filed this application to transfer the case to the High Court at Penang.

Findings of the court

[4] From the outset, it was patently clear that this application was nothing more than an attempt to delay and derail the trial in the sessions court.

[5] The respondent's solicitors had effected service of the summons at the sessions court and had informed the applicant by a letter dated 3 April 2003 that when the case comes up for first mention on 12 May 2003, and if the applicant or it's solicitors are absent, the said solicitors would proceed to take in default judgment. Pushed by this threat, the applicant wrote a letter directly to the respondent on 21 April 2003 which reads as follows:

Polyparts
Sdn Bhd

No 2, Persiaran Perindustrian Silibin 2,
Kawasan Perindustrian Ringan Silibin
30100 Ipoh, Perak, Malaysia
Tel: 605-526 7071, 527 6435
Fax: 605-526 7073
Email: pparts@pplyparts.com.my
Website://www.polyparts.com.my

21 April 2003

Niban Mould (M) Sdn Bhd
No 8, Lorong IKS Juru 9,
Taman Industri Ringan Juru,
14100 Simpang Ampat,
Penang, Malaysia
Tel: +604-5083928
Fax: +604-5083929

Attn: Mr James Goh Kim Chong

RE: Part Drawings Request for PBT (2 CAV)

We are in the process of finalizing the data collection to facilitate outstanding payments to Niban Mould as owed by Polyparts Sdn Bhd.

We have noted some missing information in our system and would appreciate it if your company can assist us by providing us with the information to speed up the payment process.

Please send us the part drawings for the following mould PBT (2 CAV) as invoiced by Niban Mould under INV #0823/09 & INV #0843/10. Please let us know if you can assist in this matter.

We look forward to receiving the faxed drawings from Niban

Mould by 22nd April 2003.

Thank you for your assistance in helping us make the payments.

Best regards,

Sgd
Brian Lai
Business & Planning Manager

[6] Since the date of reckoning was close the applicant sent another letter the next day, ie on 22 April 2003 which reads as follows:

Polyparts
Sdn Bhd

No 2, Persiaran Perindustrian Silibin 2,
Kawasan Perindustrian Ringan Silibin
30100 Ipoh, Perak, Malaysia
Tel: 605-526 7071, 527 6435
Fax: 605-526 7073
Email: pparts@pplyparts.com.my
Website://www.polyparts.com.my

22 April 2003

Niban Mould (M) Sdn Bhd
No 8, Lorong IKS Juru 9,
Taman Industri Ringan Juru,
14100 Simpang Ampat,
Penang, Malaysia
Tel: +604-5083928
Fax: +604-5083929

Attn: Mr James Goh Kim Chong

RE: Follow-Up For Fax Dated 21 April 2003 For PET (2 CAV) Data

We are following up regarding our request for part drawing information relating to a mould PBT (2 CAV) as invoiced by Niban Mould (M) Sdn Bhd under INV #0823/09 & INV #0843/10.

Please let us know by today whether you can provide us with the necessary information to facilitate the prompt repayment of outstanding monies owed to Niban Mould by Polyparts Sdn Bhd.

Thank you for your co-operation.

Best regards,

Sgd

Brian Lai

Business & Planning Manager

[7] It is clear that no where in any of these two letters did the applicant raise the issue that the moulds supplied were defective. Indeed it was pointed out by counsel for the respondent before me that to date there is no letter expressing the applicant's dissatisfaction that the moulds were defective. The only time this issue was raised was when the applicant raised this issue in the defence.

[8] On this submission and in order to give the applicant a chance to respond, I asked Mr Chia for the applicant whether his client had complained about the defective nature of the goods before the part payments were made. I had to repeat the question three times before counsel responded that he had to take instructions about this issue. To my mind, counsel ought to have come prepared to answer this issue which was obviously central to the respondent's defence to this application. I had no choice but to conclude that this was another pathetic attempt to seek for time and to delay justice.

[9] I therefore dismissed the application with costs.

Application dismissed with costs.

Reported by Annette John